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DOCTRINE OF PRESUMPTION UNDER INDIAN LEGAL SYSTEM: AN ANALYSIS

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ABSTRACT

Under The Bharatiya Sakshya Adhiniyam,2023 enforcement of presumption is widely unexplored area. Even from the point of view of its application it has many consequences for the manner in which we understand concept of 'burden of proof' of prosecution and defence. Inclusion of dramatic rise in 'reverse onus' clauses seen by current penal legislations, though these persuasive burden of proof placed on accused shows raising a presumption of guilt. In depth study of these even till today, the questions of when and how such a burden shift and when such clauses are valid remain unresolved. Views of researchers and academicians on presumption provides some insight into working of presumptions in civil proceedings. Though there is no detailed study on how they would apply in proceedings of criminal in nature, quite possible due to not foresee then. However, presumptions criminal in nature are reality today and insufficient authoritative case law in India required a depth study of The Bharatiya Sakshya Adhiniyam,2023.

I. INTRODUCTION

Mostly criminal law of India is criticized on the basis that it does not set out to find out truth but is merely on arrangement of contest between prosecution and defence in which judges acts like an umpire. During discovering of truth accused and witnesses are called by the judges for examination to whom supplementary questions can even be asked. The criminal procedure does not set out to find out whether the accused did it but only provide whether it is proved beyond reasonable doubt that he did it[i].

In criminal proceedings includes doctrine that it is better to run the risk of sparing the accused than to condemn the innocent or in other words it is better that ten guilty persons escape than that one innocent suffer[ii]. Other settled principle that accused must be considered innocent unless and until proved guilty by the prosecution in a public trial during which having all the guarantees necessary for his or her defence[iii].

Humanistic and progressive approach demands that rights of the suspected accused should not be violated by the act of the state. Extreme emphasis on the protection of one interest is bound to have an adverse impact on the other. Therefore, to maintain balance between the two interests, task is entrusted to the judiciary to find dividing line so as to harmonize the two interests without ever emphasizing one to the detriment of the other[iv].This primary study focuses upon the applicability of the provisions of presumption under different statutes.

II. MEANING OF PRESUMPTION

Presumption may be defined as wherein the absence of actual certainty of the truth or falsehood of a fact or proposition an inference affirmative or non-affirmative of that truth or falsehood is drawn by a process of probable reasoning from something which is taken for granted. This presumptive evidence has obtained a restricted legal importance and is used to designate an inference affirmative or non-affirmative of the existence of some fact drawn by judicial tribunal by a process of reasoning from some matter of fact either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal[v].

According to Celebrated work- Wigmor- Law of Evidence, " A presumption is a principle which attaches to one evidentiary fact of certain consequences as to the duty of production of the other evidence by the opponent[vi].

Helman observed that 'presumption' word has been very loosely used. He differentiates the definitions as are –
(a) Basic fact means the fact or group of facts giving rise to presumption or justifiable inference.
(b) Presumption when basic fact exists the existence of the another fact must be assumed whether or not the other fact may be rationally found from the basic fact.
(c) Justifiable inference when a basic fact exists the existence of the presumed fact may be inferred. This is also sometimes called a presumption of fact or again, a permissive presumption[vii].

For the use of presumption in legal system its effects states that "a legal presumption is a rule of law which creates an artificial probative relation or recognizes a naturally existing probative relation between two specific facts, one of which is proved and the other unproved"[viii].
Ordinarily, presumptions consist a relationship between one fact or group of facts the basic facts and another fact or set of facts, the presumed facts. Presumed facts include the basic facts. The implication of strength varying with presumption. During the existence of presumption certain advantages accrue to the person for proving the basic facts which would not accrue in the absent of these. Degree of advantage depends upon the meaning in which this 'presumption' term is used.

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The full bench of Allahabad High Court has been laid down that "under The Bharatiya Sakshya Adhiniyam,2023 only the inferences which a logical and reasonable mind normally draws. Facts and circumstances are codified under The Bharatiya Sakshya Adhiniyam from where the inferences follow. Where the law allows the raising of a presumption the court can by reason of Section 2(1) of the Act raise the presumption for the purpose of proof of a fact. Wherever the presumption is available in one or the other section then it can be raised by the court under that particular section. It all depends upon the circumstances available in each case as applicable to a particular document or person[ix].

Presumptions are helps to arguments and reasoning which considers the truth of certain facts for the purpose of some given inquiry. These are based on general experience or probability of any types or merely on convenience and policy. These may be appearing in arguments or evidence. By assuming its existence, it is taken for granted. By applying it legitimately designates rule or proposition which still leaves open to further inquiry and casts duty upon the party against whom they relate. Therefore, these are closely related to subject of judicial notice by providing the basis of many of those spontaneous recognitions of specific facts or conditions which make up that doctrine. Although presumption for the time being full-fill the result of both evidence and argument but are not themselves either argument or evidence. It would be as true so as to say that an instance of judicial notice is evidence, as to say that a presumption is evidence[x].

III CLASSIFICATION OF PRESUMPTION

Under Indian legal system there are two types firstly, Presumptions of law and secondly presumption of fact along with these some are rebuttable and irrebuttable presumptions for which the courts are bound by statue and some time by other binding authority to set up certain conditions which the courts are bound to take up beforehand a priori to consider the evidence in the case or part of a case to which these presumptions apply. On the other hand, presumptions of fact are not necessarily taken up at the beginning of the consideration of a case or any specific part of it. In reality these are assumptions of Fact which we at any stage of a case.

These presumptions are created by some policy of law to full-fill some judicially felt need or to complete objective recognised as desirable by judiciary. According to Bohlen "The force of each presumption and its effect as shifting the burden of producing evidence depends upon the nature of need or purpose which has led to the recognition of that presumption[xi].

Presumptions of Law

These presumptions are discovered either upon the principle of justice or nature's law or the experience of human conduct and affairs along with the connections ordinarily found to exist between certain things. This type also includes those rules which in certain cases either forbid or disputable with any ulterior inquiry. The one fact being proved the other it's uniform concomitant is universally and safely presumed. Greenleaf states "Uniformly experienced connection which leads to its recognition by the law without other proof the presumption" however having more or less force in proportion to the universality of the experience. This distributes presumption of law into two classes namely, conclusive and disputable.

This presumption is also said to be artificial presumption where one fact is presumed to exist if any other fact is proved, although the proved fact is not in itself direct evidence of the presumed fact. The basis for such policy is ordinarily either the experience of making evidence a customary or probable relations between the proved fact and the presumed fact or simply a rule of convenience or public policy. The classical presumption of law that death after seven year's absence[xii].

One important effect of this presumption is to invoke a rule of law and thereby compelling the jury to reach at the conclusion in the absence of evidence to the contrary from the opponent. If the opponent leads sufficient to satisfy the jury's requirement of same evidence, then this presumption disappears and case is free from any rule in jury's hand[xiii].

Since these presumptions are legal fictions and are designated for the sake of justice and convenience based upon wide human experience of connected fact proved and the fact to be proved. These are parts of adjective law through which these finds application in practice[xiv].

Presumptions of Fact

These presumptions explain that an inference can be find from the other facts that are known. It is based upon reasoning. It is a probable inference which common sense draws from circumstances ordinarily occurring in such cases. In these major premise is not a rule of law, they belong equally to any and every subject matter and are to be judged by the common propositions and the validity of arguments. Greenleaf stated "These are depending upon their own natural force and efficacy in generating belief or conviction in the mind as derived from those connections which are shown by experience, irrespective of any legal relations[xv].

This is not referring to propositions but to arguments also not to assuming but inferring during leading of evidence which can only be brought to bear on the matter at issue through a process of reasoning, the inference called a presumption of fact and evidence through which inference drawn is known as presumptive evidence. These are also some time regarded as merely permissive inferences. Moreover, these do not possess the artificial nature like presumption of law. Therefore, both these presumptions are not the species of a common genius[xvi].

The effect of these two presumptions is that when the existence of a person, a personal relationship or state of things is once established by proof, the law presumed that the person, relation or status of things continues to exist as before, until the contrary is shown or until a different presumption is raised from the nature of the subject in question[xvii].

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IV PRESUMPTIONS UNDER INDIAN STATUTE

In Indian legal system presumption is basically applied in various statutes and the courts by taking the help of this administer the justice. These statutes discussed in detail as are-

Presumption Under Prevention of Money Laundering Act, 2002

Section 22 and 23 of this Act explains about the principle of presumption. In spite of phrase 'shall be presumed' used under sub-sec. (1) explain that no way is left with the special court in respect of such records which are found in control and possession of any person during survey, search, produced or seized means this presumption covered only documents/records/writing included in clauses (i) to (iii) of sub-section (1). This type of presumption resembles with Section 2(1)(l) of The Bharatiya Sakshya Adhiniyam,2023 i.e 'shall presume' and is rebuttable. But this presumption holds good till it is rebutted by the aggrieved person. Also there is parity of transaction between indigenous documents/records and records received from the foreign countries. In both of these cases the nature of presumption is under sub-section 1 and 2 of Section 22 of the said Act.

In the same way when the money laundering included many transactions and out of which one or more is or are proved to be linked with money laundering, in this situation for the purpose of adjudication or confiscation or trial of money laundering offence under Section 18 be presumed that the remaining transactions are interconnected or associated with money laundering unless the contrary proved. It is also mandatory under the Act that burden of proof lies on the person who claims that the proceeds of the crime alleged to be involved in money laundering. Although in case of records and properties which are found in possession or control of any person in the course of survey or search under Section 16, 17and 18 of Prevention of Money Laundering Act, a presumption is raised that such documents or property belongs to such person and the contents of such records are true and further signatures and any part of such records in hand-writing of such person along with the records in property are absolute and the onus to prove the same otherwise lies on such person[xviii].

Presumption Under Prevention of Corruption Act, 1988

According to this enactment when any person has accepted or obtained for himself or for any other person any gratification or valuable thing from any other person then it shall be presumed that bribe has been accepted by that person for any consideration or otherwise unless the contrary is proved by the accused. This presumption is presumption of law and rebuttable in nature along with it is mandatory for the court to raise this presumption in every case before it[xix].

It is observed that legislature personally realised that experience in courts proved how it is different to bring home to the accused persons in the charge of bribery by noting that evidence adduced in support of the charge generally be treated as tainted evidence and therefore, it is not very easy to establish the charge of this offence beyond reasonable doubt. It is felt by the legislature that evil of corruption amongst public servants posed a serious problem and need to be effectively rooted out in the interest of effective and clean environment. Therefore, the legislature enacted Section 20 for raising the presumption as soon as the condition precedent prescribed by it is satisfied[xx].

This presumption is also applicable to Section 31 of The Prevention of Corruption Act, 1988 and is inserted to relieve the burden of proving motive in accepting said gratification. Also it cannot be invoked at the stage of investigation[xxi]. Therefore, presumption cannot be brush aside during the consideration of framing of charge by the court under Section 268(1) of The Bharatiya Nagarik Suraksha Sanhita,2023[xxii].

Presumption Under Protection of Children from Sexual Offences Act, 2012

Under this enactment Section 29 and 30 deals with the doctrine of presumption. When a person prosecuted for committing, abetting or attempt to committing offence under Section 3, 5,7and 9 of POCSO Act, 2012 then court must raise presumption that person has committed the offence under Section 29 unless the contrary is proved by the accused. Therefore, this is rebuttable presumption. In the same way under Section 30 when for any offence under this Act requires culpable mental state of the accused then the court shall presume the existence of mental state[xxiii].

Presumption Under Narcotic Drugs and Psychotropic Substances Act, 1985

The doctrine also applicable under Section 35 in which the court shall presume the existence of culpable mental state of the accused along with, it provides defence to the accused to prove the fact that he had no such culpable mental state in relation to the act charged as an offence in that prosecution. Therefore, it is rebuttable presumption. Along with it under Section 54 presumption regarding possession of illicit articles can only be raised after the prosecution has proved that accused was found to be in possession of contraband in search conducted according to the mandate codified under Section 50 of the Act. Therefore, search conducted in violation of this provision does not provide the prosecution to raise presumption under this Act. In certain cases presumption as to documents also raised under Section 66 of this Act[xxiv].

Presumption Under Negotiable Instrument Act, 1881

In the category of economic offences also this doctrine of presumption is applicable under Section 139 of the Negotiable Instrument Act by presuming that holder of cheque received it for the discharge in whole or part of any debt or liability until the contrary is proved by the person against whom the complaint filed under Section 138 of Negotiable Instrument Act. Therefore, the nature of presumption is rebuttable under this special Act[xxv].

Presumption Under Juvenile Justice Care and Protection Act, 2000

Under this enactment under Section 49 presumption and determination of age. If the person is juvenile on the date of commission of offence, he or she shall be treated as juvenile in accordance with the provisions of the Act for all purposes during inquires and trials although that person ceases to be

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juvenile during the inquires or trials means it continued to juvenile. Therefore, to assume that provisions of this Act apply on the date of inquiry or trial appears to be wrong[xxvi].

V. REVIEW OF LITERATURE

Book on **Law Relating to Dowry Prohibition, Cruelty and Harassment**[xxvii] successfully counters the various facets of presumption and brings out the applicability of presumption under different statutes. Along with it also discusses that legislation alone cannot eradicate the deep rooted social problem of dowry. In reality a strong propaganda should be started against the evil by all responsible individuals in the society.

Book titled **Law Relating to Dowry, Dowry Death, Cruelty to Women and Domestic Violence**[xxviii] provides detailed account of gender inequalities throughout the world. Gender security concerns each and every member of the society and forms the very basis of a just society. The author rightly pointed out the prerequisite for inviting presumptions and makes the readers to understand the legislative dynamism between Section 85The Bharatiya Nyaya Sanhita, 2023 and Section 4 of Dowry Prohibition Act, 1961.

Handbook on **Prevention of Corruption Act, 1988**[xxix] is helpful in understanding the concept of presumption under this special Act. Detailed explanation regarding the difference between the presumption under The Bharatiya Sakshya Adhiniyam,2023 and presumption under Prevention of Corruption Act been given along with in this scope and nature of presumption also discussed.

Book titled **Law of Evidence**[xxx] was recognised from its inception both in India and abroad as a work of unique learning. It stands in the first row of the legal literature of India and is known for his clarity and lucidity. Along with this it focuses on the entire law of evidence in the light of latest judicial pronouncements and statutory amendments. One can pay heed to this book as it provides every important case law in reference to presumption.

Book titled **The Law of Evidence**[xxxi] is a simple and emphatic commentary and describes each concept in an ambiguous manner regarding presumption in the scope of large body of case law. Scholar views also explained in the light interpretation of courts with regard to presumptions. The author also explains the scope of presumption in references with cases of suicide by married women and consent in certain rape cases. Therefore, this commentary is helpful in examining the subject matter in public interest.

Book titled **The Law of Evidence**[xxxii] is one of the oldest commentaries on the law of evidence. It has compelled relook at some of the fundamental conceptions of criminal justice system and strong relook at the conventional principles of criminal justice system such as the presumption of innocence, the standard proof beyond reasonable doubt, the right to silence and the authority of the state to detain without trial.

Book titled **Principles of the Law of Evidence**[xxxiii] is based upon the contribution of the judiciary for the development and growth of the subject. This book galore the effect of the seven years' absence of a person. It also explains how strong the presumption of marriage and what strong evidence is needed to demolish such presumption. It also helpful in understanding the concept of presumption of termination of marriage against run away husbands.

Article titled **The Public Face of Presumption**[xxxiv] discusses that how the presumptions are considered as second best inferential tool allowing us to reach conclusions, if we must under conditions of limited information. This article both surveys recent approaches to the critical analysis of presumptions in law, philosophy and discourse studies alongwith offers an account of how we might begin to think about this other public face of presumption.

Article titled **Presumption Are They Evidence**[xxxv] to invite an examination of the rule applied by some courts that rebuttable legal presumptions are evidence. This rule applicable in California, Vermont and elsewhere that rebuttable presumption is evidence which may be "weighed" by the jury or judge, with or against evidence in order to find an operative part. The author suggests that the real test of whether a presumption is evidence can be made only when evidence is introduced by an adversary that contradicts the fact presumed. Obvious the question is a pertinent one and the answer is important in the practical administration of justice.

Articled titled **Evidence: Presumptions As Evidence- An Reply**[xxxvi] mainly discussion of the question whether presumptions and inferences are evidence prompts further comment on this problem. In this it is explained that presumptions are a short cut for standard inferences from judicially noticed evidence. For legal purposes they are evidence. They are treated as secondary to direct evidence alongwith admitted and excluded in accordance with the rules of primary and secondary evidence. These presumptions are mostly excluded where the bearing of the facts on which they rest is more remote.

Article **The Effect of Rebuttable Presumptions of Law Upon the Burden of Proof**[xxxvii] term presumption is used in various senses but only one form the rebuttable presumption of law is true rule of evidence and its only effect is to shift the burden of producing evidence alongwith the vast study of these rebuttable presumptions also know about the probable consequences of it.

Article **Presumption of Innocence: Where Does India Lie**[xxxviii] claims that the low rates of conviction of accused offender is due to the tedious and long drawn criminal procedure laid down in various statutes. The legislators find shifting the burden of proof on the accused to show his innocence is a simple solution. The number of statutes which shift the burden of proof on the accused are not in few number. One of which is Terrorist and Disruptive Activities (Prevention) Act (TADA).

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Article **Cyber Terrorism and Dilution of the Doctrine of Presumption of Innocence: Formal Victory or A Real Defeat**[xxxix] attempted to make depth examinations which explores the potential of cyber threat. This has emerged as a necessary evil because of profound changes brought by the digitalization convergence and continuing globalization of computer networks. Cyber security has threatened various human rights particularly right to privacy, right to information and right to presumption of innocence. The counter terror legislations using presumption clauses directly denying the celebrated principal of presumption.

VI. JUDICIAL APPROACH

Judiciary also play a pivotal role in interpretation and evolution of the provisions of rule of presumptions under The Bharatiya Sakshya Adhiniyam, 2023 by passing various decisions through numerous statutory enactments are as –

In *Super Threading India Pvt. Ltd. v. Presiding Officer Labour Court Ludhiana*[xl] Special reference is made to Section 11 of Industrial Disputes Act, 1947 and Section 27 of the General Clauses Act, 1897. It was held that presumption of service of notice is a rebuttable presumption. When neither acknowledgement nor unserved envelope received back then notice is deemed to be served. However, this presumption of service of notice cannot be extended to that extent to defeat the claims of person who contends specifically that notice was not served to him.

In *Sultan Singh v. State of Haryana*[xli] reference is made to Section 118 The Bharatiya Sakshya Adhiniyam, 2023 and Section 80 The Bharatiya Nyaya Sanhita,2023. It was held that presumption under Section 118 of The Bharatiya Sakshya Adhiniyam, 2023 is attracted only in case of suicidal or homicidal death and not in case of accidental death. Also, according to Section 80 of The Bharatiya Nyaya Sanhita, 2023 when death of bribe is due to burning and is within seven years of marriage at matrimonial home and death is not by accident but under circumstances other than normal the presumption can be rightly invoked under the said provisions.

In *Laila v. Muhammed Ali*[xlii] It was held that if a child is born on the first day of marriage then it will be presumed under Section 116 The Bharatiya Sakshya Adhiniyam,2023 that child was legitimate. Presumption can be rebutted by showing that prior to marriage there was no access between spouses. It is important to note here that if child is born during pregnancy of valid marriage i.e spouses had access to each other then there is presumption of legitimacy of child even if wife undergoes DNA test and report is negative.

In *Nepal Singh v. State of Haryana*[xliii] the Supreme court culled out the general principle regarding power of the appellate court while dealing with an appeal against an order of acquittal under Section 419 The Bharatiya Nagarik Suraksha Sanhita,2023 Where an appellate court, however, must bear in mind that in case of acquittal there is a double presumption in favour of the accused, Firstly, the presumption of innocence is available to him under the fundamental principal of criminal jurisprudence that every person shall be presumed to be innocent unless proven guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

In *Yashpal Raghav v. State (Delhi)*[xliv] the court discusses the presumption under the prevention of corruption Act, 1988. The court explained that presumption is an inference of a certain fact drawn from other proved facts. While inferring existence of a fact from another, court is only applying a process of intelligent reasoning which mind of a prudent man would do under similar circumstances. Presumption is not final conclusion to be drawn from other facts. But it could as well as final if it remains undisturbed later.

In *Masthan Singh v. State of Punjab*[xlv] observed that the dacoity had taken place at the house of complainant .The presumption under Section 119 The Bharatiya Sakshya Adhiniyam,2023 would be attracted. As such, conviction recorded by the trial court under Section 317(3) i.e recovery of stolen property from accused stands fully established.

In *Baldev Singh v. State of Punjab*[xlvi] on examining the facts the court paid heed to Section 2 and 4 of Dowry Prohibition Act, 1961, Section 118 The Bharatiya Sakshya Adhiniyam,2023 and Section 105 The Bharatiya Nyaya Sanhita,2023. The court discussed that the expression 'soon before' is very relevant where Section 118 The Bharatiya Sakshya Adhyniyam,2023 and Section 80 The Bharatiya Nagarik Sanhita,2023 are pressed into service.

In *M/S Kumar Exports v. M/S Sharma Carpets*[xlvii] the Supreme court in order to determine the question whether offence punishable under Section 138 of the Negotiable Instrument Act, 1881 is made out against the appellant laid it necessity to examine the scope and ambit of presumptions to be raised as envisaged by the provisions of Sections 118 and 139 of the Act.

In *Union of India v. Sanjeev V. Deshpande*[xlviii] the apex court of India held that there is no presumption of innocence in favour of the accused, if the offence is committed under the Narcotic Drugs and Psychotropic Substances Act, 1985. It was held that Section 37 of the said Act departs from the long established principle of presumption of innocence in favour of an accused person until proved otherwise.

VII CONCLUSION

Under The Bharatiya Sakshya Adhiniyam,2023 presumptions have a wider scope as they not only providing help to victim but also giving direction to the case. Simultaneously, these are also aid to the judiciary to provide quick and complete justice to the society. As like the right of accused to defence or to keep silent as defence, the courts have right to make or not to make these statutory presumptions as a rule of evidence. Generally, the percentage of decisions is very high in which the victim is negatively affected due to the present law of the principle of presumption. Another, as a result of rise in modernization, education, financial security and radical feminist, people have misused the law in various cases such as sexual offences, dowry cases, kidnapping, outrage modesty of women and many more.

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This all causes due to the fact that the women are still considered to be the weaker section and therefore the courts are more inclined towards the women. Therefore, perspective of the state and its agencies needs to be change from that of protecting the women who are indulged in making false attempts due to the need of hour. Moreover, law reformers must consider and recognize this situation and necessary ways must be adopted in order to minimize the misuse of principles of presumptions by those for whose benefit it was framed. Finally, principle of presumption of innocence is not expressly specified as a constitutional right, the onus lies on the courts to confer it with the position it deserves. Irrespective of the position taken by the legislature, reverse burden should not be accepted by the judiciary when the law allows the conviction to accused without existence of reasonable doubt as to if they committed the crime for which they have been charged. Because they are not courts of law, but justice too.

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[xvi] *J.B. Thayer, A Preliminary Treatise on Evidence at the Common Law (Naba Press, Boston, 1898).*
[xvii] *Supra note 9.*
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[xix] *The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 20.*
[xx] *Emden v. State of U.P, AIR 1960 SC 548.*
[xxi] *D.V. Narasimham v. State AIR 1969 AP W271.*
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